

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 537 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

VARSHABEN PANKAJMUMAR DESAI

Versus

STATE OF GUJARAT

Appearance:

MR KB ANANDJIWALA for Petitioner

MR BY MANKAD, APP for Respondent No. 1

MR SV RAJU FOR MR. UTPAL M PANCHAL for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 02/11/1999

ORAL JUDGEMENT

Rule. Learned APP Mr. Mankad appears and waives service of Rule for Respondent No.1 State and learned counsel Mr. SV Raju for Mr. U.M.Panchal, learned counsel appears and waives service of Rule for Respondent No.2 (original complainant). With the consent of the parties, the matter is taken up for final hearing today.

Mr.S.V.Raju, learned counsel appearing for

Respondent no.2 (original complainant) has submitted that no detailed reasons should be given while permitting the petitioner to leave India, but to secure her presence before the Court, stringent conditions should be imposed. The petitioner is one of the accused of the offence registered as CR.II. No. 1/99 before Umra Police Station for the offence under sections 498A, 323, 324, 504, 506(2), 114, 120B etc. of I.P.Code and the same is registered as M.Case No. 1/99.

It is important to note that learned JMFC, Surat has exercised discretion in favour of the petitioner and in this Cri. Revision Application, the order passed by the learned Addl. Sessions Judge, Surat in Cri. Revision Application No. 137/99 dated 12.10.1999 is challenged whereby the learned Addl. Sessions Judge allowed the Revision Application quashing and setting aside the order passed by the learned JMFC, Surat permitting the petitioner to leave India on the terms and conditions enumerated therein vide his order dated 4.10.1999. In view of the peculiar facts and circumstances of the case, this court feels that submission of the learned counsel appearing for respondent no.2 to put some stringent conditions while permitting the petitioner to leave India requires to be accepted so as to secure return of the petitioner to India and to see that order passed by the learned JMFC is not flouted. It is important to note that two minor children are also going abroad accompanying the petitioner. I am also told that the petitioner is having immovable properties in India and she also hold PAN of Income-tax. Under the circumstances, if petitioner is asked to furnish details about the immovable properties held by her in India, to furnish her PAN (Permanent Account Number), to furnish address of her residence at USA and address of employer at USA coupled with the condition to furnish personal bond as well as solvent surety of the sufficient amount, while permitting her to leave India, that would meet the ends of justice. Ld. Counsel Mr. Anandjiwala for the petitioner has submitted that even over and above that, the petitioner is ready and willing to file an undertaking that she will return to India in the month of April, 2000 and will attend criminal case pending before the learned JMFC, Surat. Under the circumstances, following order is passed.

Cri. Revision Application is allowed. The impugned order passed by the learned Addl. Sessions Judge dated 12.10.1999 in Cri. Rev. Application No. 137/99 is hereby quashed and set aside and the petitioner Varshaben Pankajkumar Desai is permitted to leave India on the following terms and conditions that:-

(1) She shall return to India between 10th April 2000

and 30th April 2000 and will appear before the Trial Court in connection with the criminal case pending against her before the Trial Court.

- (2) She shall furnish Personal Bond of Rs. 50,000/ (Rs. fifty thousand only) along with Bond of Rs.50,000/ (Rs. fifty thousand only) of cash amount with one solvent surety of the like amount of a person having immovable property within the State of Gujarat, before the trial Court.
- (3) She shall furnish her permanent residential address of USA and name and address of her employer at USA. If in the event of change in any of the addresses as aforesaid, the petitioner shall intimate the same to the trial Court as early as possible and not later than 30 days from the date of such change in address taking place.
- (4) She shall also file an undertaking before the trial Court that she will return to India as per condition stipulated at Sr.No.(1) above.
- (5) On her return to India, she will surrender her passport before the trial Court. However, it will be open to her to ask for her passport if she again intends to go to USA and in that event, trial Court shall pass appropriate orders after hearing the other side on merits and in accordance with law.
- (6) In the failure of compliance of any of the above conditions, this Court suo motu or the trial Court will be at liberty to initiate proceedings for cancellation of bail granted to the complainant. Complainant shall also be at liberty to initiate such proceedings in such eventuality. It will be open to the Trial Court to confiscate the whole amount or any part thereof and to award whole or any part of such amount so confiscated to the complainant towards costs of litigation.
- (7) Undertaking to the abovesaid effect shall be filed by the petitioner before the trial Court as well as to carry out all such formalities within 15 days from today.
- (8) On compliance of the conditions enumerated above, the petitioner shall be returned her Passport along with any other relevant documents which came to be recovered by the police during the course of investigation which may be necessary for her to leave India.

Rule is made absolute to the aforesaid extent.

2.11.1999 [C.K. BUCH, J]

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